

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
MILWAUKEE DIVISION

TRACEY BUEHRIG,

Case No. 14-cv-784

Plaintiff,

vs.

FMS INVESTMENT CORP d/b/a FMS
SERVICES,

Defendant.

COMPLAINT

NOW COMES, Plaintiff Tracey Buehrig, by and through her attorneys, DeLadurantey Law Office, LLC, and complain of Defendant, FMS Investment Corp d/b/a FMS Services, and allege to the best of her knowledge, information and belief formed after an inquiry reasonable under the circumstances, the following:

INTRODUCTION

Nature of the Action

1. This lawsuit arises from the collection attempts of the Defendant.
2. Causes of Action herein are brought under the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692 *et seq.* and the Wisconsin Consumer Act ("WCA"), Wis. Stat. 427 *et seq.*.

Jurisdiction and Venue

3. Jurisdiction of this Court arises under 28 U.S.C. § 1331, because the case arises under the laws of the United States. This Court also has jurisdiction pursuant to 15 U.S.C. §

1692k(d), as it is an action to enforce liability created by the FDCPA within one year from the date on which the violation occurred.

4. This Court has supplemental jurisdiction over the claims arising under the Wisconsin Consumer Act under 28 U.S.C. §1367, because the Wisconsin Consumer Act claims are related to the FDCPA claims as they arise under the same set of facts, becoming part of the same case or controversy under Article III of the United States Constitution.

5. Venue in this Court is appropriate pursuant to 28 U.S.C. § 1391(b)(2), because this is where the acts giving rise to the claim occurred.

6. Under 28 U.S.C. § 1391(c), a defendant corporation shall be deemed to reside in any judicial district in which it is subject to personal jurisdiction. Defendant is a foreign corporation, with a principal place of business in Illinois. It is subject to personal jurisdiction in Wisconsin, since it conducts business in Wisconsin.

Parties

7. Plaintiff Tracey Buehrig (hereinafter “Mrs. Buehrig”) is a natural person who resides in the City of New Berlin, County of Waukesha, State of Wisconsin.

8. Defendant FMS Investment Corp. d/b/a FMS Services (hereinafter “Defendant FMS”) is a foreign debt collection company with a principal office address of 1701 W. Golf Road, Suite 2-150, Rolling Meadows, IL 60008, and a registered agent of CT Corporation System, 8040 Excelsior Dr., Suite 200, Madison, WI 53717.

BACKGROUND

9. On July 11, 2013, Mr. Buehrig, husband of Mrs. Buehrig, unable to pay bills as they came due, filed for bankruptcy under Chapter 13 of the Bankruptcy Code.

10. Prior to this, Mrs. Buehrig had an obligation owed to the U.S. Department of Education.

11. The U.S. Department of Education received notice of the bankruptcy. See **Exhibit A**.

12. Mrs. Buehrig was listed as the non-filing spouse in Mr. Buehrig’s bankruptcy.

13. On April 18, 2014 and June 7, 2014, Defendant FMS sent collection letters to Mrs. Buehrig. See **Exhibit B**.

14. Defendant FMS has not petitioned the court for relief from the co-debtor stay, as required under 11 U.S.C. § 1301.

15. Defendant FMS has not received relief from the co-debtor stay, 11 U.S.C. § 1301, and therefore should not be engaging in any collection efforts against either Plaintiff.

**Count 1 – Violations of the Fair Debt Collection Practices
Act (15 U.S.C. §1692)**

16. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

17. Defendant FMS is a debt collector as defined by 15 U.S.C. §1692a(6).

18. Mrs. Buehrig is a “consumer” as defined by 15 U.S.C. §1692a(3).

19. The foregoing acts of Defendant FMS and its agents constitute numerous and multiple violations of the FDCPA including, but not limited to, 15 U.S.C. §§ 1692d, 1692e, 1692e(5), 1692e(11), 1692f, and 1692f(1), with respect to the Plaintiff.

20. Specifically, Defendant FMS cannot contact a consumer who is protected by 11 U.S.C. § 1301.

21. As a result of the Defendant’s illegal conduct, Mrs. Buehrig has suffered emotional distress and mental anguish.

22. As a result of each and every Defendant’s violations of the FDCPA, Plaintiff is entitled to actual damages pursuant to 15 U.S.C. §1692k(a)(1); statutory damages in an amount up to \$1,000.00 pursuant to 15 U.S.C. §1692k(a)(2)(A); and, reasonable attorney’s fees and costs pursuant to 15 U.S.C. §1692k(a)(3), from Defendant FMS.

Count 2 – Violations of the Wisconsin Consumer Act (Wis. Stat. § 427)

23. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

24. The amount that the Defendant was attempting to collect constitutes a “claim” as that term is defined at Wis. Stat. § 427.103(1).

25. Defendant's conduct violated 427.104(1)(h) in that the Defendant's conduct as described herein could reasonably be expected to harass a person since the Defendant had no right to collect the debt from the Plaintiff.

26. Defendant's conduct violated 427.104(1)(j) in that the Defendant did not have a right to collect on the debt in that the stay was in place through Mr. Buehrig's Chapter 13 bankruptcy filing.

27. As a result of the Defendant's illegal conduct, Mrs. Buehrig has suffered emotional distress and mental anguish.

28. Defendant FMS is liable to Plaintiff for actual damages, statutory damages, punitive damages (if the evidence at trial so warrants), actual costs, and attorneys' fees, under Wis. Stat. § 427.105.

Trial by Jury

29. Plaintiff is entitled to, and hereby respectfully demands a trial by jury on all issues so triable.

WHEREFORE, Mrs. Buehrig prays that this Court will enter judgment against Defendant FMS as follows:

A. for an award of actual damages pursuant to 15 U.S.C. §1692k(a)(1) against the Defendant;

B. for an award of statutory damages of \$1,000.00 per violation of the FDCPA pursuant to 15 U.S.C. §1692k(a)(2)(A) against the Defendant;

C. for an award of costs of litigation and reasonable attorney's fees pursuant to 15 U.S.C. §1692k(a)(3);

D. for an award of actual damages, statutory damages, punitive damages (if the evidence at trial so warrants), actual costs, and attorneys' fees, under Wis. Stat. § 427.105;

E. for such other and further relief as may be just and proper.

Dated this 7th day of July, 2014.

DeLadurantey Law Office, LLC

s/ Nathan E. DeLadurantey

Nathan E. DeLadurantey (WI# 1063937)

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VERIFICATION OF COMPLAINT AND CERTIFICATION

STATE OF WISCONSIN)
) ss
COUNTY OF MILWAUKEE)

Plaintiff Tracey Buehrig, having first been duly sworn and upon oath, deposes and says as follows:

1. I am a Plaintiff in this civil proceeding.
2. I have read the above-entitled civil Complaint prepared by my attorneys and I believe that all of the facts contained in it are true, to the best of my knowledge, information and belief formed after reasonable inquiry.
3. I believe that this civil Complaint is well grounded in fact and warranted by existing law or by a good faith argument for the extension, modification, or reversal of existing law.
4. I believe that this civil Complaint is not interposed for any improper purpose, such as to harass any Defendant(s), cause unnecessary delay to any Defendant(s), or create a needless increase in the cost of litigation to any Defendant(s), named in the Complaint.
5. I have filed this civil Complaint in good faith and solely for the purposes set forth in it.
6. Each and every exhibit I have provided to my attorneys which has been attached to this Complaint is a true and correct copy of the original.
7. Except for clearly indicated redactions made by my attorneys where appropriate, I have not altered, changed, modified, or fabricated these exhibits, except that some of the attached exhibits may contain some of my own handwritten notations.

Tracey Buehrig

Subscribed and sworn to before me
this 7th day of July, 2014.

Notary Public
My commission is permanent

